

Appeal No. VA07/3/059

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Ryan Investments Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s), Carpark at Lot No. 5, Cork Airport, Lehenagh More, Lehenagh, Cork Lower, County Cork

B E F O R E

John Kerr - BBS. ASCS. MRICS. FIAVI

Deputy Chairperson

Aidan McNulty - Solicitor

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF JANUARY, 2008

By Notice of Appeal dated the 1st August, 2007, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €60.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:
"The Valuation is excessive, inequitable and bad in law".

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 27th November, 2007. The appellant was represented by Mr. Martin P. O'Donnell, BA, FIAVI, Grad. Dip. Planning & Development Economics, Principal of O'Donnell Property Consultants, Valuation, Rating & Property Consultants. The respondent was represented by Mr. Terence Dineen, B Agr Sc., a District Valuer in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective précis of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

At issue

Quantum (in two respects):-

- (1) Whether all the car hire desks in the terminal concourse should have the same NAV/RV.
- (2) At what level should the NAV/RV be set.

The Property

The subject property comprises a desk with ancillary office accommodation behind, with access to the latter provided from a shared corridor, and 61 car spaces. The office area features a number of pillars or columns within. The subject is one of six Car Rental units located within the ground floor concourse near the arrivals area of the new Cork International Airport Terminal Building.

Tenure

The subject relevant property is held on a licence Agreement for a term of 4 years which commenced on 1st January, 2004.

Services

Connected to mains.

Valuation History

A Valuation Certificate was issued at revision stage on 30th November, 2006, with a rateable valuation of €560. An Appeal was lodged and on 5th July, 2007, the Commissioner of Valuation issued the result of the Appeal with the RV unchanged at €560.

Appellant's Case

Mr. O'Donnell took the oath and provided the Tribunal with a review of his submission. He commenced by noting for the record that the Valuation Certificate issued in November 2006, correcting his précis which erroneously noted 2007. He confirmed that the appeal to the Tribunal is based on quantum only on the relevant property, being the car hire desk, as the valuation on the car parking spaces had been previously agreed and accordingly, was not the subject of appeal by his client. He advised that the foregoing car spaces are now located adjacent to the new Terminal Building. He confirmed that the area of the car hire desk is agreed with the Commissioner at 14.93 sq. metres or 150 sq. feet, being one of six such desks, all of equal size, located side-by-side, near an exit from the ground floor of the Terminal and all occupied by car rental companies, with the subject trading under the name and style of "Hertz Rent-a-Car".

Mr. O'Donnell also advised that his client had a right to use 61 parking spaces under the 4 year licence Agreement, which ended on 31st December, 2007. He also confirmed that the licence was granted following a tender call and submission of a secret bid made by his client to the Cork Airport Authority. Mr. O'Donnell, in making his case on behalf of his client, stated that he was relying upon Section 49 (1) of the Valuation Act 2001, and in accordance therewith, concluded that the property should be valued for rating purposes by reference to the "tone of the list". In so doing he referred to earlier Tribunal decisions, namely; **VA02/4/029 - Allied Irish Banks Ltd.**, **VA04/1/024 - Gerri Cobbe & Mary McGibney**, and **VA02/4/034 - The Market Square Partnership**.

He stated that the rateable valuation of car hire desks and associated car parking spaces at Irish airports was dealt with by the Valuation Office in the early 1990s, when a general revision of Dublin Airport was carried out. Following extensive negotiations at that time between two firms of rating consultants and the Valuation Office, agreement was reached with the Commissioner to establish a rateable valuation on car hire desks and car spaces in Dublin at the time, based on an accepted formula-based approach, which was later adopted by

agreement on similar hereditaments, at Shannon Airport, and again repeated following the 1996 revision of the car hire desks and car spaces at Cork Airport. The latter was agreed with an RV of €25.39 equivalent per desk, and €6.35 per car space.

He noted that following refurbishment of Shannon Airport in 2000, the revision of the desks and spaces there followed the same formula-based approach. Then, after the implementation of the Valuation Act, 2001 and because of an increase in the number of car spaces at Cork Airport, a revision in 2005 of the desks and spaces again adopted the same approach. Mr. O'Donnell contended that this approach was in fact the equivalent of a "tone of the list" and, therefore, in accordance with the 2001 Act. This latter revision applied to relevant property located at the former, albeit adjacent, Cork International Airport Terminal Building and related facilities. The resultant NAV on his client's and other desks following that revision was calculated at €5,079 and his client's 61 car spaces at an NAV of €1,269.70 each, which produced a total RV for his client of €112 on that particular relevant property.

Mr. O'Donnell referred to a copy of the Valuation Report on his client's property at that time, dated 2005, which noted that the "tone of the list" was well established, referring to the foregoing NAVs for the desks and car spaces.

He explained that the most recent revision resulted from the relocation of the Terminal facilities to the new Terminal Building at Cork Airport, and advised that the desk area and style had not varied from its original location, and the car spaces had not been affected. He stated that in approaching his calculation of NAV he applied a 10% increase on the NAV for the desk to reflect the upgraded and enhanced facility of the new Terminal Building.

Mr. O'Donnell confirmed that the current licence Agreement, as noted above, prevailed at the time of the 2005 revision. He again contended that that revision produced an RV based on a formula-approach as aforementioned associated, in his view, with the "tone of the list".

Mr. O'Donnell explained that the valuation method adopted by the current revision produces a resultant rateable valuation of €200 on his client's desk within the Terminal, or the equivalent of eight times that which would apply if the "tone of the list" approach were to be adopted. He further stated that the foregoing RV of €200 would represent a value four times that applied on the car rental desks currently at Dublin Airport, which he considered to be an

inappropriate comparator in terms of airports with regard to size and through-put of passengers.

Mr. O'Donnell explained that, when the revision exercise was carried out on the subject property, there existed at the time a "tone of the list" within the subject rating authority area, being those desks and car spaces at the former Terminal Building. He contended that there was no change in the relevant property save a relocation of the desk to the new Terminal, and he again referred to the aforementioned decision of the Tribunal in **VA04/1/024 - Gerri Cobbe & Mary McGibney** and cited Section 63 of the Valuation Act, 2001.

Mr. O'Donnell then summarised his calculations saying that he added 10% to the NAV on the desk in its previous location to reflect the improved circumstances at the new Terminal Building. This resulted in a proposed NAV of €5,586.90 or proposed RV of €27.93 on the desk which, if added to the proposed agreed RV of €87.04 on the car spaces, produced an RV of €115 on all of the subject property.

During the course of the hearing Mr. O'Donnell expressed concern that the Commissioner, in the current revision, was seeking to use the licence fee to determine the rateable valuation, an approach which he challenged and claimed would be beyond the scope of Section 49 of the Valuation Act, 2001.

He also explained to the Tribunal that his client believes that as low as 2% of the business conducted from the desk is generated by so-called "walk-in" customers and that the nature of such business has changed dramatically in recent years by the global use of the world wide web and on-line bookings. He argued that the respondent, and the respondent's submission made prior to hearing, relied upon a so-called "point breakdown" approach to determine the rateable valuation on the subject property and, as such, was devoid of explanation, analysis, or support, and was at variance with the provisions of the Valuation Act 2001, and with the agreed methodology for airport based car hire desks within this State.

Cross-examination

Mr. Dineen questioned the level of experience Mr. O'Donnell had with regards to rating valuations in the subject area of Cork Lower, to which the latter indicated that, while they may be just a few in number in that particular region, he was supported by at least 17 years of

rating valuation experience. Mr. Dineen said that he had dealt with every case in Cork Lower on behalf of the Valuation Office, since 1974. Mr. Dineen queried Mr. O'Donnell on his views of what the relevant property might command in rent in 1988, having regard to all the physical characteristics, location and circumstances of the subject when it was revised in 2006. Mr. O'Donnell would not accept the challenge put to him by Mr. Dineen that the task was to find an outcome, and not one to address methodology to produce a fair RV. Conversely, Mr. O'Donnell affirmed his view that the methodology to determine RV must be in accordance with that set out by him in his précis and argument adduced at hearing.

Continuing with cross-examination, Mr. Dineen indicated that 2006 rental levels may require a reduction factor in the range of 40% to reflect 1988 levels. Mr. Dineen sought unsuccessfully to engage Mr. O'Donnell on his views of rateable valuation of other property uses within the Terminal, such as a bank, bookshop, advertising spaces, and so on, and his effort to cross-examine Mr. O'Donnell further on the valuation of the so-called pre-booked desk space to the rear of the subject property, was denied by the Tribunal.

The Tribunal then adjourned to review supplementary evidence headed, "Supplementary Précis", submitted at the hearing by Mr. Dineen, with a copy provided to Mr. O'Donnell. The hearing recommenced a few minutes later with Mr. Dineen continuing with his cross-examination of Mr. O'Donnell, who refused to accept that the licence fee should be considered as a starting point or basis on which the net annual value of the subject property should be calculated. Mr. O'Donnell did not challenge the actual mathematics employed by Mr. Dineen but would neither accept the methodology or the relevance of the approach adopted by the latter in his précis and supplementary précis. Mr. Dineen questioned Mr. O'Donnell as to whether passing rent should be adopted as a starting point to arrive at a value for rating purposes, as per the "tone of the list", and as the vast majority of RV's are agreed by reference to the "tone", where same exists. Mr. O'Donnell replied that one of the other six desks, which was not appealed following revision, does not of itself reflect the "tone of the list", though Mr. Dineen contended otherwise. Mr. O'Donnell, in reply to further questions from Mr. Dineen, expressed the view that the four pre-booked desks at the new Cork Airport Terminal, which had not been appealed following revision, could not be considered as representative of the "tone of the list" as they were not so, at the relevant date.

In response to further questions addressed to him by Mr. Dineen, Mr. O'Donnell could not confirm the height of the ceiling over the subject, when informed that the appellant's former desk at the old Terminal had a ceiling height of 2.5 metres. He was then informed by Mr. Dineen that the ceiling is now approximately 12 metres high and that the new concourse, at 180 metres, is 140 metres longer than that of the former Terminal. Mr. Dineen also noted the existence of a 25 metre overhang external shelter attached to the northern elevation of the new Terminal which did not prevail at the former building. Mr. O'Donnell reminded Mr. Dineen that he had made an allowance of 10% for improved circumstances in the subject property in the new Terminal. Again, arising from questions on the licence and the tender process, it was noted by the parties that the bidding was carried out in secret and, in reply to Mr. Dineen's query, Mr. O'Donnell offered the view that each of the six car hire desks within the new Terminal should have the same level of NAV applying, as they are side-by-side, serving a similar purpose and all six are of common size.

Respondent's Case

Mr. Dineen took the oath and formally adopted his précis as his evidence-in-chief, together with the aforementioned Supplementary Précis prepared by him and dated 26th November, 2007, containing two pages. He then reviewed his submission.

Mr. Dineen confirmed that the Airport was valued on revision during 2006 and that five of the six car rental desks were valued at the same time. In seeking rental evidence he noted that there was a licence fee being paid by the bank, two shops, a restaurant, bars, the pre-booked desks and the car rental desks, but very little rental evidence was made available to him. He stated that the occupier of one of the four units in the pre-booked office to the rear, which shared a common area in terms of size and location, paid an annual rent in 2005 of €37,731, being the largest payment of the three units for which he could find evidence in that area. He stated that he considered the licence fee payment synonymous with the payment of rent. He noted the principle of "variable outputs" payable on a small restaurant on the ground floor of the Terminal Building, which he equated to service charges payable by a lessee to a lessor. He explained the difficult task it was for him to obtain rental levels at the new Terminal Building, noting that there was very limited information available on the tender call and the replies thereto. He concluded that the 61 car spaces in the tender submission made by the appellant may have commanded the highest tender figure submitted, but also stated that the rents on the car hire desks are not calculated or payable proportionate to the number of

car spaces allocated. He also noted for the Tribunal the fact that the former car spaces, which were located then and currently nearest the Terminal Building, carried a net annual value of €1,269 each.

Mr. Dineen said that the car parks at the old Terminal were removed in 2006 and transferred during the year and, accordingly, the parties agreed that the old licences would fall over and continue to the end of 2007 when new Tender calls would be made for a new term of 3 years. He said that the tenants of the pre-booked rooms behind the subject property are paying rent to Cork Airport Authority at levels close to 6½% of turnover, though possibly twice as much as office rent within the Terminal, which he reported was passing at €60 / m². In addition, the rent charged on the pre-booked office space occupied by four tenants, namely: Dollar Thrifty, Murray's, Dan Dooley and Enterprise, are not allocated car parking spaces. He suggested that the foregoing information served him as a useful guide when calculating an appropriate RV for the subject property. Relying upon rental evidence provided to him for three of the four occupiers of the pre-booked room, Mr. Dineen estimated a total passing rental figure and further analysed that figure again to produce a rent per sq. metre. By this method he concluded that the NAV on the pre-booked space may be used as a source figure which, he suggested, would amount to approximately one-third of the 2006 value to reflect it in 1988 terms. Then, referring to his Supplementary Précis and specifically to his Method 1 analysis, he reached the conclusion that the 1988 NAV on the subject desk, if considered on the combination of value applied to car spaces and desk, apportioned from the licence fee being paid by the appellant in 2005, would amount to a sum marginally higher than that established by the Commissioner. When this computed figure was added to the NAV on the 61 car spaces which were agreed at the level of €1,269 each the resultant total NAV amounted to a sum which produced an RV set by the Commissioner of €60 as set out in Mr. Dineen's précis, page 7.

Mr. Dineen introduced a second method in support of his calculations, which again relied upon the employment of the 2005 licence fee paid by the appellant as a basis to compare the NAV being sought by the Commissioner, and that of the appellant, and reflecting these net annual value sums in percentage terms back to 1988 values, and in so doing, seeking to demonstrate a correlation of same when a similar exercise was carried out for the other four occupied rental desks adjoining the subject.

Mr. Dineen repeated his view that the issue to be decided by the Tribunal was whether the NAV figure of €17,409 calculated by him or that of €2,996 sought by the appellant, was correct. He explained that he was faced with two problems in carrying out his task: the first being whether or not the same NAV should apply to each of the car rental desks, and the second, what figure should apply to each desk, be they either the same, or varied. He concluded that the NAV should vary from desk to desk by adopting his estimate as to what the passing rent might be. He said that the location of the subject property, in his view, would command a rental premium where the difference from the desk No. 5 to desk No. 1 might amount to about 75%. However, he acknowledged that if the same level of NAV were to be applied to each desk, the RV, rather than being based on €200 for the subject, would average at €150 each per desk, for those five occupiers paying rent. He repeated that the 2005 licences were issued when the appellant's business was located within the old Terminal, though subsequently located to the new Terminal on the same terms to the end of 2007, and he reminded the Tribunal that the valuation to be determined on this desk may remain at the same level for possibly 10 – 20 years.

He acknowledged that there is an argument to support the application of the same level of net annual value to each of the desks but he argued that, based on Mr. O'Donnell's approach, such would relate to a figure no higher than that applied on the pre-booked room. In this context he cited the example of Mr. O'Donnell's proposed RV of €27.93 on the subject desk, according to which, by Mr. Dineen's calculations and based on the foregoing, the pre-booked room would have to be at the same RV or lower, e.g. €20.00. In which case, each of the four tenants within the pre-booked area, would carry a rateable valuation of €5.00 which would equate to an NAV of €4,000. This latter figure was just 4% of what he estimated the total passing rent may be in the pre-booked area - i.e. €100,000.

Mr. Dineen summarised the valuation of five of the six desks, noting that one remained vacant. He disagreed strongly that the NAV on the desk of the subject property should remain the same as that for the appellant's desk in the old Terminal, which was set at £20.00 or €25.39, noting that the through-put of passengers had increased at Cork Airport from one million in 1995, to three million per annum which implied a proportionate increase in potential customer numbers for the car hire firms.

In his précis Mr. Dineen provided a summary and breakdown of the RV's and net annual value of the four desks, being Hertz, Budget and National, together with desk No. 5, which was not appealed, and the four occupiers in the pre-booked area at the rear, similarly not appealed. He summarised the issues which were addressed by the appellant at First Appeal and concluded his direct evidence by stating that, in approaching his task, he did not feel constrained by so-called comparisons cited by the appellant at Dublin or Shannon Airports, either as to method or quantum. He concluded that in his view, the accepted formula was applied by him in this case, and the difference between the parties rests with the level of applied or calculated net annual value. He stated that, in his opinion, there were no direct comparisons for the subject.

Cross-examination by the Appellant

Mr. O'Donnell queried why Mr. Dineen appeared not to know what to do initially in this circumstance, and why he chose to employ "a point value concept" to calculate the rateable valuation of the subject.

Concluding remarks of the parties

Mr. Dineen stated that he could not agree that Section 49(1) of the 2001 Act applied in this case and so chose to consider the provision of Section 49(2) of the Act. He acknowledged agreement on the rateable valuation set on the 61 Car Spaces at €6.35 each. He stated that the approach adopted by Mr. O'Donnell, to rely upon comparisons drawn from Dublin and Shannon Airports, was not appropriate. Mr. Dineen contended that if those comparisons were to substitute for comparisons drawn from inside the rating authority area of Cork County Council, if the latter were not available, then there would have been no need for him to have considered Section 49(2)(b), assuming that such comparison exercise refers to net annual value rather than rateable valuation. He contended that Section 49(2)(b) of the 2001 Act does not seek to rely on comparisons from outside the Rating Authority Area, if none are available from within, but rather seeks to have the November 1988 net annual value calculated without, in his view, any constraint on the route taken to so do, and thus without the constraint of comparisons which Section 49(1) of the Act requires. Mr. Dineen acknowledged that his arguments are subtle and noted that the 1st November 1988 in the Act is mentioned just once, i.e. in Section 49(2)(b).

Mr. O'Donnell concluded his remarks by stating that his methodology was consistent with both practice and legislative provision, and that he had followed Section 49(1), as required.

Findings

The Tribunal acknowledges and thanks both the appellant and the respondent for their submissions and arguments made at hearing and the manner in which they conducted their presentations. It acknowledges the effort made by the Valuers and the challenges faced by them in their respective tasks. In reaching its determination, the Tribunal must only consider the facts submitted and adduced at hearing, as follows:-

1. The relevant property, being the subject of this revision and appeal to the Tribunal, comprises of two elements, namely the 61 car spaces and the desk with its ancillary office space, the latter being one of six units, five of which are occupied, on the ground floor within the new concourse of Cork Airport, which was opened during 2006.
2. The facility, collectively described as the new Cork Airport Terminal, offers improved trading circumstances for the appellant taking into account the enlarged and enhanced surroundings and increased passenger through-put capacity and numbers.
3. The Valuation Act 2001 sets out the legislative framework and Section 49 of same provides a method of determining property values to establish the rateable valuation of a relevant property.
4. The Tribunal was not satisfied of the necessity to consider an approach to valuation to determine the net annual value and rateable valuation of the subject property based on the methodology employed by the respondent.
5. The Tribunal is satisfied that the appellant has complied with Section 49 of the 2001 Act and accepts that Mr. O'Donnell relied upon evidence supported by appropriate comparisons to other properties as provided for in the said Act.
6. Accordingly, having regard to the foregoing and in particular to Item 5 above, the Tribunal accepts the calculations set out by him in reaching a rateable valuation, as follows:-

	<u>NAV</u>
Car hire desk	€5,586.90
Car Spaces	<u>€7,409.00</u>
Total NAV:	€8,995.90
RV @ 0.5%:	€ 414.97
RV Say €415	

This determination applies equally to those 3 appealed valuations (namely VA07/3/046 – Budget Rent-a-Car, VA07/3/057 – Avis/Johnson & Perrott Ltd. and VA07/3/058 – Centrepoint Rent a Car) for which the appeal in the subject property is the agreed test case.

And the Tribunal so determines.